

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AMIE KOLE-JAMES,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

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UNPUBLISHED  
December 1, 2011

No. 297918  
Tax Tribunal  
LC No. 00-382575

Before: M. J. KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Petitioner appeals as of right the orders of the Michigan Tax Tribunal, Small Claims Division, dismissing her petition for review of a decision by respondent's Board of Review and denying reconsideration of the order of dismissal. We affirm in part, reverse in part, and remand for further proceedings.

**I. FACTS AND PROCEDURAL HISTORY**

On July 21, 2009, the board issued an "Affidavit of Correction" denying petitioner's request for an exemption from liability for her 2009 property taxes due to poverty. The affidavit stated that "[a] further appeal of the assessed value and taxable value or a qualified agricultural property exemption may be made, WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE, to [the Tribunal]." In September 2009, the Wayne County treasurer mailed petitioner a notice of tax delinquency for tax year 2008. On October 21, 2009, petitioner sent to the Tribunal a handwritten letter stating that it was an "appeal of the 2008 property tax increase." The letter noted that petitioner had "applied to the City of Detroit for hardship for 2009." On November 25, 2009, petitioner sent to the Tribunal a second handwritten letter stating that the city "[d]enied the property exemption" and stated, "I would like to appeal the exemption." The Tribunal included the November 25, 2009, letter in the file containing petitioner's October 21, 2009, letter and assigned the same case number.

On January 26, 2010, the Tribunal dismissed the case with prejudice as untimely, stating:

[T]he initial letter of appeal/petition is untimely as it was not received by the deadline of the tax year involved or mailed by first-class mail and postmarked on

or before the deadline of the tax year involved as required by MCL 205.735. As such the Tribunal has no jurisdiction over the property assessment(s) at issue.

Petitioner responded to the Tribunal in a letter dated January 29, 2010. She asserted with regard to the denial of the poverty exemption that she responded to the Affidavit of Correction within several days of receiving it. Petitioner claimed that she did not receive the affidavit until November 6, 2009. She provided a copy of an envelope from the board postmarked “11/06/09.” The envelope does not display the addressee’s information, but a slightly curved vertical line on the copy suggests, as petitioner claims, that the envelope had a plastic window in order to display addressee information printed on the letter inside. Petitioner sent another letter to the Tribunal dated March 15, 2010, regarding the denial of the poverty exemption.

The Tribunal treated petitioner’s January 29, 2010, letter as a motion for reconsideration and denied the motion on April 16, 2010.

## II. STANDARDS OF REVIEW

“In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.” *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011), quoting *Mich Bell Tel Co v Dep’t of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

The statutory time requirements applicable to an appeal to the Tribunal are jurisdictional in nature. *Electronic Data Systems Corp v Township of Flint*, 253 Mich App 538, 543; 656 NW2d 215 (2002). This Court reviews jurisdictional questions de novo. *Jackson Community College v Michigan Dep’t of Treasury (On Rehearing)*, 241 Mich App 673, 678; 621 NW2d 707 (2000).

A motion for reconsideration under MCR 2.119(F) requires the moving party to “demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” This Court reviews a lower court’s decision to deny a motion for reconsideration for an abuse of discretion. *In re Begliner Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). With specific regard to the Tribunal, this Court must reverse the decision of an agency “if substantial rights of the petitioner have been prejudiced” because the decision was the result of the agency’s abuse of discretion. MCL 24.306(1)(e).<sup>1</sup> This Court may then “reverse or modify the decision or order or remand the case for further proceedings.” MCL 24.306(2).

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<sup>1</sup> MCL 24.306 appears in Chapter 4 of the Administrative Procedures Act, MCL 24.271 *et seq.* This chapter is applicable to Tribunal hearings pursuant to MCL 205.726.

### III. INITIAL DISMISSAL OF APPEAL

Here, the Tribunal's initial January 26, 2010, order dismissing petitioner's appeal of the denial of the poverty exemption as untimely was proper despite the Tribunal's erroneous reference to MCL 205.735.<sup>2</sup> Petitioner's request for a poverty exemption was governed by MCL 211.7u. Appeals from decisions governed by MCL 211.7u, in turn, are governed by MCL 211.53c, which states: "If the July or December board of review denies a claim for exemption under section 7u, the person claiming the exemption may appeal that decision to the Michigan tax tribunal within 30 days of the denial." MCL 211.53c specifically applies under these circumstances. See *Briggs Tax Service, LLC v Detroit Public Schools*, 485 Mich 69, 76; 780 NW2d 753 (2010). The Affidavit of Correction that petitioner supplied to the Tribunal was dated July 21, 2009. Petitioner never claimed in her November 25, 2009, letter of appeal to the Tribunal that she did not receive the affidavit until November 6, 2009. Thus, this allegation was not before the Tribunal at the time of its January 26, 2010, order of dismissal. Accordingly, the Tribunal reached the right result on the basis of the facts before it at the time it issued the January 26, 2010, order.<sup>3</sup>

### IV. PETITIONER'S MOTION FOR RECONSIDERATION

Petitioner timely moved for reconsideration of the Tribunal's order of dismissal in a January 29, 2010, letter. She asserted that her November 25, 2009, appeal was timely because she did not receive notice of the board's decision until November 6, 2009, at the earliest. In support of this assertion plaintiff provided an envelope from the board that was postmarked November 6, 2009. The Tribunal denied the motion:

With respect to the denial of Petitioner's request for a poverty exemption for the 2009 tax year, Petitioner did not actually raise that issue until the filing of this Motion, which was more than 35 days after the issuance of the of the purported notice of the action taken by Respondent's 2009 July Board of Review. Further, the copy of the City's envelope attached to the Motion and postmarked November 6, 2009, is not sufficient to establish that the notice dated July 21, 2009, was not sent to petitioner until November 6, 2009, as the copy provided does not indicate

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<sup>2</sup> When dismissing the appeal, the Tribunal generally cited MCL 205.735, which applies to Tribunal proceedings commenced before January 1, 2007. MCL 205.735(1). However, MCL 205.735a governs proceedings commenced after December 31, 2006. MCL 205.735a(1). MCL 205.735a(6) invokes the jurisdiction of the Tribunal *in an assessment dispute* as to residential real property when a party in interest files a written petition *on or before July 31 of the tax year involved*. MCL 205.735a(6) also provides an alternative deadline, applicable to matters other than assessment disputes, *in all other matters* if a party in interest files a written petition *within 35 days after the final decision, ruling, or determination*. (Emphasis added.).

<sup>3</sup> The same result would obtain under the 30-day deadline in MCL 211.53c or the 35-day deadline in MCL 205.735a(6).

who the envelope was sent to or the mailing address utilized. As such, Petitioner has failed to show good cause to set aside the dismissal or demonstrate a palpable error that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected. See MCR 2.119. Therefore, IT IS ORDERED that Petitioner's Motion for Reconsideration is DENIED.

The Tribunal's conclusion that petitioner did not raise her challenge to the 2009 exemption decision until she filed her January 29, 2010, motion for reconsideration is directly contradicted by petitioner's November 25, 2009, letter and the Affidavit of Correction, which petitioner properly attached to the letter as required by 1999 AC, R 205.1320(1) ("If available, a copy of the notice or action taken by the local board of review . . . shall be attached" to the petition.). The heading of the letter referred to the petition number listed on the affidavit and, as noted above, the letter stated: "I would like to appeal the exemption." The content of petitioner's correspondence also substantially complied with the requirements of 1999 AC, R 205.1240, which respondent invokes here. The letter and Affidavit established the tax year and type of tax involved, 1999 AC, R 205.1240(2)(c), that a poverty exemption was at issue, 1999 AC, R 205.1240(2)(c)(ii)(E), and that the Board denied petitioner's request for the exemption, 1999 AC, R 205.1240(2)(e). Any deficiencies, therefore, were minor. Further, the very administrative rules cited by respondent establish that such deficiencies would not justify the Tribunal in simply disregarding petitioner's November 25, 2009, letter. 1999 AC, R 205.1320(2) governs the Tribunal's duties "[u]pon receipt of a defective petition"; under these circumstances, "the clerk of the tribunal shall send the petitioner a form to be completed and returned to the tribunal within 28 days after mailing or as otherwise ordered by the tribunal." There is no evidence that the Tribunal sent petitioner such a form in order to correct any deficiencies.

For these reasons, the Tribunal erred to the extent it concluded that the November 25, 2009, letter was insufficient to initiate an appeal of the Board's 2009 decision. But, just as significantly, the record does not reveal whether or why the Tribunal actually found the November 25, 2009, letter deficient; its April 16, 2010, order denying reconsideration does not state facts in support of its conclusion that petitioner "did not actually raise [the 2009 poverty exemption denial] issue until the filing of [her motion for reconsideration]." Indeed, this bare conclusion equally suggests that the Tribunal overlooked the letter altogether. MCL 205.751(1) generally requires that a "decision and opinion of the tribunal . . . shall include a concise statement of facts and conclusions of law." See *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993). This Court has stated that "[a]dequate findings of fact are particularly important in proceedings before the small claims division because review is hindered by the informal record maintained in those proceedings." *Id.* Here, none of the Tribunal's statements, findings of fact, or conclusions of law addressed petitioner's November 25, 2009, letter.

Accordingly, the Tribunal's findings and reasoning on this issue were inadequate. And, in part in light of the resulting absence of contrary findings or reasoning by the Tribunal, the evidence on the record appears plainly inconsistent with the Tribunal's conclusion that petitioner did not raise the 2009 poverty exemption issue until she filed for reconsideration on January 29, 2010; rather, petitioner appears to have adequately appealed the exemption denial by way of her November 25, 2009, letter. Therefore, the Tribunal's conclusion that the issue was first raised on

January 29, 2010, was not supported by competent, material, and substantial evidence on the whole record. *Klooster*, 488 Mich at 295.

Finally, the Tribunal concluded that the envelope postmarked November 6, 2009, was insufficient to establish that petitioner received notice of the board's decision on or about that date. This finding is crucial to the outcome of petitioner's argument that her appeal was timely; if we accept the Tribunal's implicit factual conclusion that the deadline for appeal began on July 21, 2009—the date listed on the affidavit—petitioner's November 25, 2009, letter of appeal was untimely under both the 30-day period for appeal listed in MCL 211.53c and the similar 35-day period for appealing "other matter[s]" listed in MCL 205.735a(6), on which the Tribunal appeared to rely. But if the Tribunal had concluded that petitioner received notice on or about November 6, 2009, its order implies that it may have found the appeal timely because it was filed within 30 days of the notice. We conclude that the Tribunal's implicit finding with regard to the date of notice was not supported by substantial evidence on the whole record.

For purposes of resolving this appeal, we accept petitioner's argument that, under the circumstances of this case, the appeal period began running from the date she received notice of the board's decision, and not from the July 21, 2009, date of its decision. In support of her argument, petitioner reasonably cites *Nomads Inc v City of Romulus*, 154 Mich App 46, 51-52; 397 NW2d 210 (1986), in which this Court employed the date of notice to measure the period for appeal because the petitioner received notice after the initially applicable statutory appeal deadline had expired. See, also, *Durkee Lakes Land Co v Clinton Twp*, 112 Mich App 595, 596-597; 316 NW2d 496 (1982). More significantly, the Tribunal did not conclude otherwise and respondent does not contest petitioner's argument on this point. Rather, the Tribunal appears to have implicitly assumed that the date of notice *could* be relevant; it proceeded to evaluate petitioner's evidence on the notice issue and to reject her claim that the appeal was timely on the basis of the insufficiency of the evidence.

In light of petitioner's evidence, however, we conclude that the Tribunal prematurely presumed that petitioner effectively received notice on or about July 21, 2009. The Tribunal found that "the copy [of the November 6, 2009, envelope] provided does not indicate who the envelope was sent to or the mailing address utilized." But petitioner observes that the envelope was a "window" envelope that did not have the addressee's information printed on its surface. Rather, the window would display addressee information printed on a document inside the envelope. Accordingly, she argues that, absent discovery or an evidentiary hearing, there was little more she could do to prove that the affidavit was mailed on November 6, 2009. Perhaps she could have placed the Affidavit back into the envelope, to show that the addressee information properly appeared in the window. But she reasonably posits that doing so would have added little weight to her argument; any correspondence with the right addressee text placement would suffice, including a document sent to petitioner by respondent other than the affidavit in question. Further, she reasonably argues that the postmarked envelope and her statements regarding her receipt of the affidavit constituted the only direct evidence on the record concerning when she received the affidavit. Respondent had not appeared or contested the evidence; indeed, even now respondent does not claim that it mailed the affidavit before November 6, 2009.

Accordingly, we conclude that the tribunal's finding that the envelope postmarked November 6, 2009, was not sufficient to establish that the affidavit was not sent to petitioner until November 6, 2009, was not supported by substantial evidence on the whole record. To the contrary, the envelope and petitioner's explanations were sufficient to call into question the Tribunal's presumption that the affidavit was mailed on or about July 21, 2009, and therefore to "demonstrate a palpable error by which the court and the parties have been misled." MCR 2.119(F)(3). The Tribunal abused its discretion by simply rejecting petitioner's evidence as insufficient when it was likely all that she could offer and respondent did not challenge it. The date that petitioner received the affidavit remains a question of fact for the Tribunal to determine on remand.

In light of our resolution of this issue, we need not reach petitioner's unpreserved argument that respondent and the Tribunal also violated her constitutional due process rights.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly  
/s/ E. Thomas Fitzgerald  
/s/ William C. Whitbeck